



american women in
radio and television inc.

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August 22, 1994

VIA HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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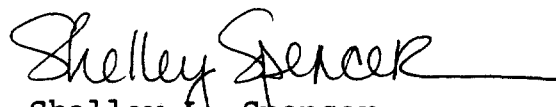
Re: GC Docket No. 92-52

Dear Mr. Caton:

Enclosed for filing are an original and nine copies of the Reply Comments of American Women in Radio and Television, Inc. in the above-referenced docket.

If you have any questions regarding the filing, please call me.

Sincerely,


Shelley L. Spencer
Vice President - Government
Relations
(202) 424-7798

Attachment

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of
Reexamination of the Policy
Statement on Comparative
Broadcast Hearings

GC Docket No. 92-52

REPLY COMMENTS OF
AMERICAN WOMEN IN RADIO AND TELEVISION, INC.

American Women in Radio and Television, Inc. ("AWRT") hereby submits its reply comments on the Federal Communications Commission's ("FCC's" or "Commission's") Second Further Notice of Proposed Rulemaking in the above-referenced proceeding. AWRT is a national non-profit organization of professional women and men who work in radio, television, cable, advertising and related communications fields. The mission of AWRT is to enhance the impact of women in the electronic media and allied fields by educating, advocating, and acting as a resource to its members and the industry. AWRT has been active in numerous Commission proceedings and previously filed comments in this proceeding.^{1/} Most recently, AWRT participated in the FCC's rulemaking to develop competitive bidding rules for broadband personal communications services. AWRT supports and encourages the

^{1/} See Comments of American Women in Radio and Television, Inc., GC Docket No. 92-52 (filed June 2, 1992).

expansion of ownership by women of all communications systems, common carrier and broadcast alike.

I. The Commission Should Revise the Policy Statement to Include a Preference for Ownership by Women Based on the Severe Underrepresentation of Women in the Industry.

Based on the under-representation of women in the ownership of broadcast stations, AWRT endorses the proposals of Henry Geller and Irene Rodriguez Diaz de McComas for revision of the Commission's Policy Statement on Comparative Broadcast Hearings to include a comparative preference for women ownership of new broadcast facilities. AWRT respectfully submits that a comparative preference for female ownership is warranted based on the under-representation of women in the communications industry and the broadcast industry in particular. Furthermore, a gender-based preference for licensing new broadcast facilities is consistent with the Communications Act and Commission's goal of achieving maximum diffusion of control of the media of mass communications.

Significantly, the adoption of a gender-based preference for female ownership of broadcast stations is not dependent upon a nexus between ownership and programming which the Court of Appeals for the D.C. Circuit found lacking in *Lamprecht v. FCC*, 958 F.2d 382 (D.C. Cir. 1992) nor is such a preference dependent on the integration criteria rejected by the same court in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). The court's decision in *Lamprecht* was based on the perceived inadequacy of evidence documenting a nexus between the ownership of broadcast facilities

by women and the airing of women's programming. *Lamprecht*, 958 F.2d at 398. The statistics on the low level of ownership of broadcast facilities by women provide the requisite evidentiary foundation. The court's decision in *Bechtel* rejected the Commission's quantitative integration criteria but did not disturb or reject the FCC's consideration of qualitative criteria such as race or gender. *Bechtel*, 10 F.3d at 882. Standing alone the under-representation of women in the ownership of broadcast facilities and the need to promote this economic opportunity for women provides the necessary evidentiary and legal foundation for a gender-based preference in awarding licenses for new broadcast facilities. See *Califano v. Webster*, 430 U.S. 313 (1977); *Associated General Contractors v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987); *Coral Construction Co. v. King County*, 941 F.2d 910-932 (9th Cir. 1991).

The FCC recently recognized the severe under-representation of women in ownership of communications businesses in its order adopting competitive bidding rules for broadband PCS.^{2/} In the *Fifth Report and Order*, the FCC recognized that "women and minorities have not gained substantial ownership representation in either the broadcast or non-broadcast telecommunications industries." *Fifth Report and Order* at ¶ 107.

^{2/} In the *Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, Fifth Report and Order, PP Docket No. 93-253, FCC 94-178 (rel. July 15, 1994) ("*Fifth Report and Order*").

Statistics on women-owned businesses fully support the FCC's conclusion and provide the factual predicate for a gender-based preference in the comparative criteria used to award licenses for new broadcast facilities. In 1987, the latest year for which relevant statistics are available, 26 television stations were owned and controlled by women out of 1,342 television stations operating in the United States by the end of 1987.^{3/} In percentages therefore only 1.9% of all television stations were owned and controlled by women. Out of the 10,244 radio stations operating in the United States at that time, only 394 were owned 50% or more by women, or 3.8% of all radio stations.^{4/} Thus, as of 1987, 420 broadcast stations were owned and controlled by women. In addition, as recognized by the FCC in the *Fifth Report and Order*, according to the last available U.S. Census women represent only 24% of the communications firms. If firms without paid employees are excluded the number drops to 14.5%.^{5/}

Other studies confirm the low level of representation of women in the ownership ranks of broadcast facilities. A Congressional Research Service Study entitled "Minority Broadcast Station Ownership and Broadcast Programming: Is There a Nexus?," released in 1988, found that women held a 51% or greater

^{3/} See *Women Owned Business*, U.S. Department of Commerce (1990) (based on 1987 economic census); see also 1988 *Broadcasting/Cablecasting Yearbook*, p. A-2.

^{4/} *Id.*

^{5/} *Fifth Report and Order* at ¶ 107; see also *Women Owned Business*, U.S. Department of Commerce (1990).

ownership interest in 7.1% of the broadcast stations surveyed. The same survey found that minorities held 51% or greater ownership interests in 3.5% of the broadcast stations surveyed across the country. A study commissioned by the FCC in 1982 found that women held 50% or more ownership interest in 8.5% of the AM stations, 9% of the FM stations and 2.8% of the television stations across the country. Although the 1982 study and the 1988 Congressional Research Service study are not directly comparable because they define control differently (50% and 51%), the comparison is still useful. The rough comparison reveals that women controlled 7.9% of stations in 1982 and only 7.1% in 1988 -- if not a decline, then certainly a stagnation, in the number of women-owned broadcast stations.

These numbers are at odds with the number of women in the United States and in the U.S. workforce. According to the 1990 U.S. Census, women represented 46% of the civilian labor force in the United States. The stark statistics demonstrate what Congress clearly recognized when it enacted the Omnibus Budget Reconciliation Act of 1993 -- that the dissemination of spectrum licenses among a wide variety of applicants including business owned by women is an important and legitimate government interest. The same Congressional concern of under-representation by women in the provision of spectrum-based services that resulted in that Congressional mandate warrant revision of the comparative criteria used in awarding broadcast licenses to include a qualitative gender-based preference.


II. The FCC Should Conduct a Study of The Diversity In Ownership in Broadcast Facilities.

In addition to adopting a preference for ownership of new broadcast facilities by women, AWRT urges the Commission to conduct a survey and study on the current level of women ownership of broadcast facilities. A study of the diversity in ownership of broadcast licenses has not been undertaken since the Commission's study in 1982. Such a study would enable the Commission to identify trends in broadcast ownership and provide an important foundation for future policy decisions.

WHEREFORE, AWRT recommends that the Commission revise its Policy Statement on Comparative Broadcast Hearings to include a gender-based preference and conduct a study of the levels and trends in women ownership of broadcast facilities.

Respectfully submitted,

AMERICAN WOMEN IN RADIO
AND TELEVISION


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